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Washington, D.C. 20463

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**FIRST GENERAL COUNSEL'S REPORT**

**CELA**

MUR: 7080

DATE COMPLAINT FILED: 6/6/2016

DATES OF NOTIFICATION: 6/9/2016

DATE OF LAST RESPONSE: 8/8/2016

DATE ACTIVATED: 9/16/2016

EXPIRATION OF SOL: 2/8/2021 -  
2/22/2021

ELECTION CYCLE: 2016

**COMPLAINANT:**

Public Integrity Alliance, Inc.

**RESPONDENT(S):**

Paul Babeu

Paul Babeu for Congress and Chris Marston  
in his official capacity as treasurer

Pinal County Sheriff's Office

**RELEVANT STATUTE(S):**

52 U.S.C. § 30101(8)(A)

52 U.S.C. § 30104(b)

52 U.S.C. § 30116(a)

52 U.S.C. § 30125

11 C.F.R. § 100.26

11 C.F.R. § 100.27

11 C.F.R. § 100.29

11 C.F.R. § 100.52(d)(1)

11 C.F.R. § 100.55

11 C.F.R. § 100.74

11 C.F.R. § 104.13

11 C.F.R. § 104.3

11 C.F.R. § 109.21

11 C.F.R. § 109.20 (b)

11 C.F.R. § 110.1(b)

11 C.F.R. § 300.61

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

1    **I. INTRODUCTION**

2            The Complaint alleges that Paul Babeu ("Babeu"), Paul Babeu for Congress and Chris  
3    Marston in his official capacity as treasurer ("Committee"), violated the Federal Election Act of  
4    1971, as amended (the "Act") and Commission regulations by accepting excessive in-kind  
5    contributions from the Pinal County Sheriff's Office ("PCSO") in the form of a coordinated  
6    mailer and coordinated Facebook posts, and failing to report them. For the reasons set forth  
7    below, we recommend that the Commission find no reason to believe that PCSO made, and the  
8    Committee accepted, an in-kind contribution regarding the mailer, and dismiss the potential  
9    violation regarding the possible impermissible use of nonfederal funds for the mailer. We further  
10   recommend that the Commission dismiss the allegation regarding the Committee's failure to  
11   report in-kind contributions relating to official time purportedly spent creating or posting the  
12   Facebook communications.

13   **II. FACTUAL SUMMARY**

14            Paul Babeu is the Sheriff of Pinal County, Arizona. He filed a Statement of Candidacy  
15   declaring his 2016 candidacy for the House of Representatives from Arizona's First  
16   Congressional District on January 31, 2016.<sup>1</sup> Paul Babeu for Congress is Babeu's principal  
17   campaign committee, and Chris Marston is its treasurer.

18            The Complaint alleges that on or about February 8, 2016, PCSO distributed a mailer, paid  
19   for with seized racketeering funds, to approximately 8,200 households in Pinal County.<sup>2</sup> Titled  
20   "Keeping you, your family and our communities safe," the mailer highlights recent successes of

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<sup>1</sup> Babeu won the Republican primary, but lost the 2016 general election.

<sup>2</sup> Compl. at 1-2 (June 6, 2016).

1 the department, provides safety tips, and describes volunteer opportunities.<sup>3</sup> It also includes a  
2 short introduction from Sheriff Babeu along with his headshot and several bullet points  
3 describing his and PCSO's achievements, such as "reduced operating budget by 8%." The mailer  
4 ~~was distributed 204 days before the Republican primary and does not mention Babeu's~~  
5 congressional candidacy.

6 The Complaint alleges that the mailer is a communication coordinated between the  
7 Committee and PCSO for which PCSO paid \$6,072, resulting in an unreported and excessive in-  
8 kind contribution to the Committee. In support, the Complaint claims that many of the themes of  
9 the mailer, *e.g.*, border security and immigration, feature prominently in the Committee's  
10 messaging, and that at least two photos of Babeu from the mailer are also posted on the  
11 Committee's website.<sup>4</sup> It further alleges that the mailer was targeted to "high efficacy  
12 Republican voters" to influence the August 2016 Republican primary election.<sup>5</sup>

13 Respondents claim that the mailer does not satisfy the content prong of the coordinated  
14 communications test and therefore is not a coordinated communication.<sup>6</sup> They also question the  
15 Complaint's assertion that they attempted to target Republican primary voters, noting that a  
16 portion of the Pinal County residents who received the mailer reside outside of Arizona's First  
17 Congressional District and, therefore, were not targeted in connection with Babeu's federal

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<sup>3</sup> *Id.*, Ex. A.

<sup>4</sup> *Id.* at 1, Ex. B. We found only one of the photos on the Committee website, a headshot of Babeu.

<sup>5</sup> *Id.* at 1-2. The Complaint alleges that a random sampling of 100 recipients revealed that 85% were eligible to vote in the primary election (open to Independents and unaffiliated voters) and that 58.5% of the individuals sampled were registered Republicans, compared to the 31.2% of total voters in Pinal County who are registered Republicans.

<sup>6</sup> Resp. at 1-2 (Aug. 8, 2016).

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1 campaign.<sup>7</sup> Finally, Respondents argue that funding for the mailer required independent  
2 approval by the Pinal County Attorney, which suggests a nonpolitical purpose.<sup>8</sup>

3 The Complaint further alleges that the Committee received in-kind contributions from  
4 PCSO in the form of coordinated Facebook communications. It provides several screenshots of  
5 substantially similar Facebook photos and corresponding text lauding PCSO's successes that  
6 were posted to both the official PCSO Facebook page and the Committee page on the same dates  
7 in late January through February 2016.<sup>9</sup> The Complaint asserts that costs associated with  
8 preparing and distributing the posts, *e.g.*, compensation paid to PCSO staff, represent in-kind  
9 contributions to the Committee. Respondents do not address this allegation.

10 **III. LEGAL ANALYSIS**

11 **A. Mailer**

12 **1. The Mailer does not Satisfy the Commission's Coordinated Communications**  
13 **Test**

14 A payment for a coordinated communication is an in-kind contribution from the payor of  
15 the communication to the candidate or candidate committee with which it is coordinated.<sup>10</sup>  
16 Payments for coordinated communications are subject to the Act's contribution limits and source  
17 prohibitions, as well as its reporting requirements.<sup>11</sup> The contribution limit for a person in the

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<sup>7</sup> *Id.* at nn. 11, 12. The Response also notes that the mailer was not sent to individuals who reside outside of Pinal County, even though Babeu's congressional district extends beyond Pinal County. *Id.*

<sup>8</sup> *Id.* at 2-3.

<sup>9</sup> Compl., Ex. D.

<sup>10</sup> 11 C.F.R. § 109.21(b).

<sup>11</sup> See 52 U.S.C. §§ 30104(b), 30116(a)(1); 11 C.F.R. §§ 109.21(b), 104.13(a), 104.3, 110.1(b).

1 2016 election cycle was \$2,700 per candidate per election.<sup>12</sup> The Commission has previously  
2 determined that a local government agency is a "person" under the Act.<sup>13</sup> Accordingly, the  
3 \$6,072 payment for the mailer, if a coordinated communication, would be an excessive in-kind  
4 contribution to the Committee.<sup>14</sup>

Commission regulations establish a three-part test to determine whether a communication is coordinated. A communication is coordinated when it: (1) is paid for by a person other than the candidate or candidate's committee; (2) satisfies one of the five content standards; and (3) satisfies one of the six conduct standards.<sup>15</sup> The mailer appears to satisfy the conduct prong because Respondents do not dispute that it was created and distributed at Babeu's request.<sup>16</sup> It may not, however, satisfy the payment prong.<sup>17</sup> It appears that PCSO paid for the mailer with county RICO funds, but use of those funds required approval by the Pinal County Attorney. Thus, the degree of control Babeu exercised over the RICO funds is unclear. Because we cannot determine whether the payment prong has been satisfied, it is necessary to review the remaining prong of the communications test: the content prong.

<sup>12</sup> 52 U.S.C. § 30116(a)(1); 11 C.F.R. § 110.1(b)(1)(iii).

<sup>13</sup> See Advisory Op. 2000-05 (Oneida Nation of New York) (“the Commission has made clear that State governments and municipal corporations are persons under the Act and are subject to its contribution provisions.”); MUR 5815 (Madrid, *et al.*).

<sup>14</sup> Babeu ran in two elections in 2016, the Republican primary and the general election. Thus, even if a portion of the mailer's costs were to be designated to the general election, the purported \$6,072 contribution would still exceed the contribution limits by \$672 ( $\$2,700 \times 2 = \$5,400$ ).

<sup>15</sup> 11 C.F.R. § 109.21(a).

<sup>16</sup> 11 C.F.R. § 109.21(d)(1)(i).

<sup>17</sup> See Advisory Op. 2009-26 (Coulson) (concluding that the payment prong of the coordinated communications test was not met where federal candidate paid for communications with her state officeholder account because “the candidate and her agents are paying for these communications.”).

1 The mailer does not satisfy the content prong of the coordinated communications test.  
2 The content standard can be met in one of five ways: (1) if the communication is an  
3 electioneering communication; or it is a public communication that (2) republishes campaign  
4 materials prepared by the candidate's committee; (3) contains express advocacy; (4) clearly  
5 identifies a congressional candidate and is distributed within 90 days of that candidate's election;  
6 or (5) is the functional equivalent of express advocacy, *i.e.*, is "susceptible of no reasonable  
7 interpretation other than as an appeal to vote for or against a clearly identified Federal  
8 candidate."<sup>18</sup>

9 The mailer meets none of these standards. While the mailer appears to be a mass mailing,  
10 a form of public communication,<sup>19</sup> it was distributed 204 days before the primary election, well  
11 outside the relevant time windows for congressional primary electioneering communications and  
12 communications that clearly identify a federal candidate.<sup>20</sup> It is not express advocacy or its  
13 functional equivalent because it does not urge the election or defeat of Babeu or another federal  
14 candidate, nor does it contain language that could only be interpreted by a reasonable person as  
15 urging the election or defeat of a federal candidate.<sup>21</sup> The mailer therefore fulfills the content  
16 prong of the coordination communications test only if it is a republication of campaign materials.

<sup>18</sup> 11 C.F.R. § 109.21(c)(1)-(5).

<sup>19</sup> 11 C.F.R. §§ 100.26, 100.27.

<sup>20</sup> 11 C.F.R. §§ 100.29(a)(2), 109.21(c)(1), (4).

<sup>21</sup> Under the Commission's regulations, a communication expressly advocates the election or defeat of a clearly identified Federal candidate if it "[u]ses phrases such as 'vote for the President,' 're-elect your Congressman,' 'support the Democratic nominee,' 'cast your ballot for the Republican challenger for U.S. Senate in Georgia,' 'Smith for Congress,' 'Bill McKay in '94,' 'vote Pro-Life' or 'vote Pro-Choice' accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, 'vote against Old Hickory,' 'defeat' accompanied by a picture of one or more candidate(s); 'reject the incumbent,' or communications of campaign slogan(s) or individual word(s), which in context, can have no other reasonable meaning than to urge the election or defeat of one or more

We have no information indicating that the mailer was distributed after the publication of similar campaign materials, such as those on the Committee's website. Further, there appear to be material differences in the mailer and the Committee's website, which indicate that the mailer is not a republication of campaign materials. Though both the mailer and the Committee website feature similar issues, those issues are not presented "nearly verbatim," as the Complaint avers.<sup>22</sup> For example, there is little direct overlap in how the mailer and Committee website discuss border security, as shown below.

PCSO Mailer <sup>23</sup>	Committee Website <sup>24</sup>
<p><b>"Smuggling Interdiction"</b></p> <p>Our Sheriff's Office Anti-Smuggling Unit partners with the U.S. Border Patrol and Homeland Security Investigations on the West Desert Task Force and Silverbell Initiative, both of which are task forces targeting smuggling activities in and through Pinal County.</p> <p>The unit was critical in the arrest of 19 drug cartel scouts in Pinal County. The scouts were living on hilltops overlooking drug smuggling routes, warning smugglers of law enforcement presence. All of the scouts were convicted and sentenced to prison.</p>	<p><b>"Leader on Border Security"</b></p> <p>Pinal County is the number one pass through county in all of America for drug and human smuggling, ground zero in the fallout over America's unsecured Southern border.</p> <p>Pinal County contains an estimated 75 – 100 drug cartel cells and listening posts/observation posts, used to facilitate the illegal transportation of people and narcotics into the United States. There have been cartel murders on residential streets, cold blooded executions, and attacks on law enforcement.</p> <p>Sheriff Babeu has acted decisively to disrupt, dismantle and</p>

clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say 'Nixon's the One,' 'Carter '76,' 'Reagan/Bush' or 'Mondale!'" 11 CFR 100.22(a). A communication also constitutes express advocacy if "[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because- (1) [t]he electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) [r]easonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action." 11 CFR 100.22(b).

<sup>22</sup> See MUR 6502 (Nebraska Democratic Party) Factual and Legal Analysis at 10-11 (finding no campaign republication where communications shared similar themes found in campaign materials but used different language); *cf.* MUR 6783 (Indian Americans for Freedom, *et al.*) (finding republication of campaign materials where text of mailer published by respondent corporation was identical to text featured in committee mailers) (open matter).

<sup>23</sup> Compl., Ex. A.

<sup>24</sup> Compl., Ex. D.

The Anti-Smuggling Unit works in partnership with the narcotics task force on enforcement actions involving large scale smuggling operations. ASU also targets criminal groups involved in human and drug smuggling in Pinal County.

destroy cartel activities. He also assisted Senator McCain and Kyl with the "10-Point Border Security Plan."

Sheriff Babeu has emerged as a national leader on border security, and an outspoken critic of the Federal government's failure to fulfill their most solemn obligation to keep us safe.

1  
2 While both sources discuss the same topic, they use significantly different language. The text of  
3 the mailer therefore does not appear to be a republication of campaign materials.

4 The mailer features a headshot of Babeu in his Sheriff's uniform that also appears on the  
5 Committee's website. However, the record does not indicate that the photo is a republication of  
6 Babeu's campaign material. We located a cached version of the photo published to the National  
7 Sheriffs' Association website in August 2014, well before Babeu's federal candidacy. Given that  
8 Babeu has served as Sheriff of Pinal County since 2009, and the photo was taken no later than  
9 2014, it is likely that PCSO had access to Babeu's headshot without downloading it from the  
10 Committee website. We therefore conclude that Babeu's headshot is not a republication of  
11 campaign materials.<sup>25</sup> Thus, the mailer does not fulfill the content prong of the coordinated  
12 communications test and therefore is not a coordinated communication.<sup>26</sup>

<sup>25</sup> Further, even if PCSO did download the headshot from the Committee website, the Commission has previously dismissed complaints involving the alleged republication of campaign photos. *See* MUR 5996 (Bee, *et al.*) (dismissing allegation because photo was publicly available for download at no charge from the campaign's website and was a small portion of the television advertisement at issue); MUR 5743 (Sutton, *et al.*) (dismissing republication allegation where third party obtained photo from publicly accessible website). Here, however, the likelihood that the photo originated from either PCSO or another non-campaign source warrants a no-reason-to-believe finding.

<sup>26</sup> The Complaint acknowledges that the mailer's content "does not align precisely" with any of the content requirements set forth in 11 C.F.R. § 109.21(c), but claims that the regulation is not an exclusive list of content that constitutes coordinated communications. Compl. at 4. It argues that the alleged targeting of the mailer warrants a more expansive view of coordination communications than the regulations provide. *Id.* at 4-5. However, the regulation clearly defines a "coordinated communication" as one that "satisfies *at least one* of the content standards in [11 C.F.R. 109.21(c)]." 11 C.F.R. 109.21(a) (emphasis added); *see, e.g.*, MUR 6722/6723 (House Majority PAC) Factual and Legal Analysis at 3-4 (concluding video was not a coordinated communication because it did not meet



1 Because the mailer does not satisfy the content prong of the Commission's test for  
2 coordinated communications, we recommend that the Commission find no reason to believe that  
3 PCSO made, and the Committee accepted, an unreported, excessive contribution in the form of a  
4 coordinated communication.<sup>27</sup>

5 **2. The Commission Should Dismiss Potential Violations Relating to the Use of**  
6 **Non-Federal Funds to pay for the Mailer**  
7

8 The costs of the mailer were paid for by PCSO with Pinal County's RICO funds, which  
9 raises the question of whether Babeu, a federal candidate at the time, directed an entity he  
10 controlled to spend funds not subject to the Act and Commission regulations in connection with a  
11 federal election. Federal candidates, their agents, and entities directly or indirectly established,  
12 financed, maintained, or controlled by, or acting on behalf of, federal candidates may not solicit,  
13 receive, direct, transfer, or spend funds "in connection with an election for Federal office" unless  
14 those funds are subject to the reporting requirements and contribution limits of the Act.<sup>28</sup>

15 In addition to being a federal candidate, Babeu was also a local officeholder at the time  
16 the mailer was distributed.<sup>29</sup> A local officeholder may not spend funds for a public

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the content prong); MUR 5788 (RFCP, *et al.*) Factual & Legal Analysis at 7 ("Since the mailer does not meet the content prong of the coordinated communications regulation, a coordinated communication did not occur.")

<sup>27</sup> Further, the record does not indicate that PCSO made any expenditures unrelated to public communications that were coordinated with Babeu or the Committee. See 11 C.F.R. § 109.20(b).

<sup>28</sup> 52 U.S.C. § 30125(e)(1); 11 C.F.R. § 300.61.

<sup>29</sup> Babeu did not run for reelection for Sheriff of Pinal County in 2016, and does not appear to have been a local candidate at the time the mailer was distributed. Under Arizona law, a candidate is an "individual who receives or gives consent for receipt of a contribution for his nomination for an election to any office in this state other than a federal office." A.R.S. § 16-901(2). Babeu terminated his committee for Pinal County Sheriff on January 29, 2016. See Paul Babeu for Sheriff, Campaign Finance Report, *available at* <http://pinalcountyaz.gov/elections/January%2031%202016%20Report/Paul%20Babeu%20Termination%20January%2031%202016.pdf> (p.42). Babeu's local committee did check a box indicating that it would remain active in other jurisdictions, but Babeu does not appear to have accepted funds for a local office since that termination report.

1 communication that clearly identifies a federal candidate and promotes, attacks, supports, or  
2 opposes a candidate "unless the funds are subject to the limitations, prohibitions, and reporting  
3 requirements of [the] Act."<sup>30</sup>

4 Babeu, a federal candidate, apparently directed PCSO to distribute the mailer using Pinal  
5 County's RICO funds. The RICO funds do not appear to be subject to the Act's requirements  
6 and prohibitions, and the \$6,072 cost of the mailer exceeds the potentially applicable  
7 contribution limit.<sup>31</sup> Accordingly, if the mailer were deemed to be in connection with a federal  
8 election, the costs would represent an impermissible use of nonfederal funds under section  
9 30125(e)(1).

10 The Commission considered similar issues in Advisory Op. 2009-26 (Coulson). There,  
11 the Commission concluded that because a "legislative update" letter distributed with Coulson's  
12 state government funds contained no reference to an election and did not solicit any donations,  
13 nor expressly advocated her election or the defeat of her opponents, it was not in connection with  
14 Coulson's federal election under 52 U.S.C. § 30125(e)(1).<sup>32</sup> These circumstances are also true of  
15 the PCSO mailer.

16 Regarding section 30125(f)(1), the Commission stated that a state officeholder "may not  
17 spend funds for a public communication that clearly identifies a candidate for Federal office and  
18 [promotes, attacks, supports, or opposes] a candidate for that office" unless those funds are

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<sup>30</sup> 52 U.S.C. § 30125(f)(1); 11 C.F.R. § 300.71.

<sup>31</sup> 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b).

<sup>32</sup> AO 2009-26 at 8.

1 subject to the requirements of the Act.<sup>33</sup> As in Coulson, Babeu used nonfederal funds to pay for  
2 a public communication that clearly identified a federal candidate.<sup>34</sup> The mailer touted PCSO's  
3 and Babeu's own achievements. Like the Coulson letter, there is content in the PCSO mailer that  
4 might arguably promote, attack, support or oppose ("PASO") a federal candidate: five bullet  
5 points under Babeu's headshot describing his successes as Sheriff. That content, however,  
6 describes only past and ongoing activities of PCSO under Babeu's leadership, *e.g.*, "[r]educed  
7 operating budget by 8%" and "[l]ow crime rates and safe communities," and the Commission  
8 concluded similar statements did not constitute PASO.<sup>35</sup> Further, the mailer appears to have  
9 been sent only to Pinal County residents, some of whom resided outside of Babeu's  
10 congressional district, and not to other residents of the Congressional district.

11 Unlike the letter in Coulson, however, PCSO does not appear to have published similar  
12 materials before Babeu's federal candidacy, a factor that the Commission appeared to consider  
13 significant.<sup>36</sup> Based on this difference and the somewhat modest amount in violation, we  
14 recommend that the Commission dismiss the potential violations under 52 U.S.C. § 30125(e)(1)  
15 and (f)(1) and 11 C.F.R. §§ 300.61 and 300.71.

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<sup>33</sup> *Id.* at 9.

<sup>34</sup> 11 C.F.R. §§ 100.17, 100.26 (defining "clearly identified" and "public communication").

<sup>35</sup> Additionally, the mailer contains text and corresponding photos describing Babeu's testimony to Congress regarding immigration laws, and his meeting with presidential candidate Ben Carson regarding human and drug smuggling. Like the bullet points, this content describes past and ongoing activities as they relate to PCSO (*e.g.*, the mailer reads "The committee heard of our deputies busting the largest drug smuggling operation in the history of Arizona."). See Advisory Op. 2009-26 (Coulson) (noting that statements such as "I have made every effort to ensure that Illinois offers a climate where doctors can thrive"; "I have remained committed to making progress for the residents of this State"; and "I will continue to look for innovative ideas to help improve the health care system of Illinois . . ." could possibly be construed as promoting the candidate, but ultimately concluding that the statements regarding Coulson's past and ongoing legislative activities did not promote or support her).

<sup>36</sup> *Id.*

**B. Internet Communications**

The Complaint further alleges that nearly identical postings made to PCSO's Facebook page and to the Committee's Facebook page indicate that those communications were coordinated. It is unclear whether the postings were first made to the PCSO page or the Committee page.<sup>37</sup> The Facebook communications must meet the standards set forth in 11 C.F.R. § 109.21 for the Commission to find that they are coordinated communications.<sup>38</sup>

The Complaint argues that the Facebook posts fulfill the payment prong because PCSO presumably paid staffers to create the content, and that the contemporaneous nature of the postings suggests that the conduct prong is also satisfied. Again, it is unclear whether the payment prong is satisfied under these circumstances. These communications, however, do not meet the content standard of the coordinated communication test. Even if the posts could be shown to be republications of campaign material, they are not "public communications" because they were on the internet and there is no information that they were placed there for a fee.<sup>39</sup>

The duplicate Facebook posts, however, coupled with the Response's failure to address this allegation, raise the question of whether the Committee may have received an impermissible in-kind contribution from PCSO in the form of free staffing. The Act defines a "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any

<sup>37</sup> With the exception of one set of posts, which shows that the original was posted first to the Committee page on February 22 and later to the PCSO page on April 5, the duplicate posts share the same dates.

<sup>38</sup> The Complaint alleges that the Facebook communications were coordinated pursuant to 11 C.F.R. § 109.20(b). As noted, that regulation applies to expenditures that are not communications.

<sup>39</sup> 11 C.F.R. § 100.26 (excluding internet communications, other than those that are placed for a fee on a website, from the definition of "public communication").

1 person for the purpose of influencing any election for Federal Office."<sup>40</sup> "Anything of value"  
2 includes all in-kind contributions, which are "any goods or services [provided] without charge or  
3 at a charge that is less than the usual and normal charge for such goods or services. . . ."<sup>41</sup> Thus,  
4 the value of the time spent by PCSO staff while on duty creating campaign communications for  
5 Babeu may constitute an in-kind contribution.

6 Because the Response does not reply to this allegation, it is unclear who wrote and posted  
7 the Facebook articles, if they were all posted by the same individual, if that person was on duty at  
8 the time, and, if so, whether those services might qualify for the volunteer or internet exceptions  
9 to the regulations.<sup>42</sup> Regardless, the value of any such potential contribution to the Committee  
10 was likely small, and investigating further would not be an efficient use of the Commission's  
11 resources. Accordingly, we recommend that the Commission dismiss the allegation that  
12 Respondents violated 52 U.S.C. § 30104(b)(3) and 11 C.F.R. § 104.3(a)(4) by failing to report an  
13 in-kind contribution.<sup>43</sup>

14 **IV. RECOMMENDATIONS**

- 15 1. Find no reason to believe that Pinal County Sheriff's Office made, and Paul  
16 Babeu, Paul Babeu for Congress and Chris Marston in his official capacity as  
17 treasurer accepted, an unreported and excessive in-kind contribution in the form  
18 of a coordinated mailer in violation of 52 U.S.C. §§ 30104(b), 30116(a)(1); 11  
19 C.F.R. §§ 109.21(b), 104.13(a), 104.3, or 110.1(b).  
20  
21 2. Dismiss the potential violations by Paul Babeu under 52 U.S.C. §§ 30125(e)(1),  
22 (f)(1) or 11 C.F.R. §§ 300.61, 300.71 regarding the use of nonfederal funds.

<sup>40</sup> 52 U.S.C. § 30101(8)(A).

<sup>41</sup> 11 C.F.R. § 100.52(d)(1).

<sup>42</sup> 11 C.F.R. §§ 100.74, 100.55; *see also* MUR 6272 (Devore for California, *et al.*) (dismissing allegations that a candidate's State Assembly staff provided his Senate campaign with in-kind services).


<sup>43</sup> *See Heckler v. Chaney*, 470 U.S. 821 (1985).


3. Dismiss the allegation that Paul Babeu, Paul Babeu for Congress and Chris Marston in his official capacity as treasurer accepted an unreported in-kind contribution in the form of internet communications in violation of U.S.C. § 30104(b)(3) or 11 C.F.R. § 104.3(a)(4).
4. Approve the attached Factual and Legal Analysis.
5. Approve the appropriate letters.
6. Close the file.

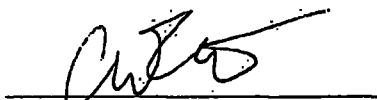
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Date: 12.15.16

  
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